



General Services Administration
Office of General Counsel
Washington, DC 20405

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Subject: Implementation of the Local Competition ~~DOCKET FILE COPY ORIGINAL~~
Telecommunications Act of 1996, CC Docket No. 96-98

Dear Mr. Caton:

Enclosed please find the original and sixteen copies of the Comments of the General Services Administration and Department of Defense (GSA/DOD) for filing in the above-referenced proceeding.

Sincerely,

Michael J. Ettner

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Senior Assistant General Counsel
Personal Property Division

Enclosures

cc: International Transcription Service
Janice Myles (Diskette and four copies)

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
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Implementation of the Local Competition)
Provisions in the Telecommunications Act)
of 1996)
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CC Docket No. 96-98

**COMMENTS OF THE
GENERAL SERVICES ADMINISTRATION
AND THE
UNITED STATES DEPARTMENT OF DEFENSE**

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May 16, 1996

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SUMMARY

GSA/DOD urges the Commission to adopt explicit national rules to ensure the efficient and timely implementation of the local competition provisions of the 1996 Act. These rules should apply to both the interstate and intrastate aspects of interconnection, service and unbundled network elements. The Commission should revise its Part 64 allocation rules to remove the costs of interconnection and unbundled network elements before the Part 36 jurisdictional separations process is applied.

The Commission should clearly distinguish between the provision of interconnection and unbundled network elements by incumbent LECs and the provision of transport and termination services by all LECs. The Commission should require that interconnection and unbundled network element prices be at a level no lower than TSLRIC, and no higher than FDC. The rate structure for interconnection and unbundled network elements should be based upon cost-causation. Dedicated costs should be recovered through flat-rates, and volume and term discounts should be permitted.

The Commission should establish the "bill and keep" methodology as the standard procedure for ensuring reciprocal compensation for the transport and termination of traffic. TSLRIC based charges should be permitted only if there is an extreme imbalance of terminating traffic.

The Commission should also require that incumbent LEC wholesale prices exclude avoided costs on a TSLRIC basis. This will be fair to incumbent LECs and permit the development of a vigorously competitive resale market.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of

Implementation of the Local Competition
Provisions in the Telecommunications Act
of 1996

CC Docket No. 96-98

**COMMENTS OF THE
GENERAL SERVICES ADMINISTRATION
AND THE
UNITED STATES DEPARTMENT OF DEFENSE**

The General Services Administration and the United States Department of Defense ("GSA/DOD"), on behalf of the customer interests of all of the Federal Executive Agencies, submit these Comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM"), FCC 96-182, released April 19, 1996. In this NPRM, the Commission requests comments and replies on rules to implement the local competition provisions of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("1996 Act"), Sections 251-3.¹

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996)

I. Introduction

Pursuant to Section 111(a) of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 759 (a)(1), GSA is vested with the responsibility to coordinate and provide for the procurement of telecommunications services for Federal agencies. The Act also allows GSA to delegate responsibility for the procurement of services to individual agencies when there are good reasons for such delegation.²

GSA and the Department of Defense are among the largest users of telecommunications services in the nation. As large users of telecommunications services, GSA and the Department of Defense have long supported the promotion of full and open competition in all telecommunications markets.

In these Comments, GSA/DOD supports the adoption of Commission rules which will implement the national telecommunications policy embodied in the 1996 Act in the quickest and most effective manner.³

² 40 U.S.C. 759 (b)(3).

³ GSA also fully supports the separate Comments of the Secretary of Defense, filed herein by counsel for the Defense Information Systems Agency, relating to National Security and Emergency Preparedness.

II. Provisions of Section 251

A. Scope of the Commission's Regulations

1. Role of the Commission

Section 251 of the 1996 Act requires incumbent local exchange carriers ("LECs") to offer interconnection and network elements on an unbundled basis, and imposes a duty to establish reciprocal compensation arrangements for the transport and termination of calls.⁴ Section 251 (d)(1) of the 1996 Act states:

Within 6 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall complete all actions necessary to establish regulations to implement the requirements of this section.

The Commission's implementing rules must be designed "to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."⁵ Section 253 further requires the Commission to preempt the enforcement of any state or local statute or regulation which has the effect of "prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."⁶

⁴ 1996 Act, § 251 (b)(5), (c)(2) and (c)(3).

⁵ Joint Explanatory Statement, p. 1.

⁶ 1996 Act, § 253 (a), (d).

The Commission interprets these directives as requiring it to take a proactive role in implementing the pro-competitive, de-regulatory, national policy framework envisioned by the 1996 Act.⁷ The NPRM invites Comments on whether the Commission should adopt explicit rules to address those issues that are most critical to the successful development of competition.⁸

GSA/DOD believes that the promotion of efficient competition in local telecommunications markets throughout the country requires the adoption of explicit rules by the Commission. As the Commission notes, "the nationwide character of development and deployment of underlying telecommunications technology, and the nationwide nature of competitive markets and entry strategies," demand a uniform approach and national rules.⁹

National rules should minimize variations among states in implementing the national telecommunications policy mandated by the 1996 Act. This will serve to expedite the transition to competition, particularly in states that have not yet adopted rules allowing local competition.

As the Commission notes, explicit national rules can be expected to attract investment in new entrants by enhancing the ability of the investment community to assess

⁷ NPRM, para. 26.

⁸ Id., para. 27.

⁹ Id., para. 26.

an entrant's business plans.¹⁰ National rules will also permit new entrants to achieve significant economies through uniform network configurations across the nation.

In short, the efficient and timely implementation of the pro-competitive national policy framework envisioned by the 1996 Act requires the adoption of explicit national rules by the Commission.

¹⁰ Id., para. 30.

II. Provisions of Section 251

A. Scope of the Commission's Regulations

2. Jurisdictional Issues

The Commission tentatively concludes that "Congress intended sections 251 and 252 to apply to both interstate and intrastate aspects of interconnection, service and network elements, and thus that our regulations implementing these provisions apply to both aspects as well."¹¹ GSA/DOD agrees that it would make little sense in terms of economics, technology, or jurisdiction, to distinguish between interstate and intrastate components for purposes of Section 251 and 252.

GSA/DOD also agrees with the Commission's tentative conclusion that the pricing standards it establishes pursuant to Section 252 (d) should be based upon jurisdictionally unseparated costs.¹² In this connection, GSA/DOD recommends that the Commission revise its Part 64 allocation rules to remove the costs of services provided pursuant to Sections 251 and 252 before the Part 36 separations process is applied. The negotiated contracts envisioned by the 1996 Act are similar in nature to the Shared Network Facility Arrangements ("SNFA") contracts executed by AT&T and the Bell Operating Companies ("BOCs") at the time of divestiture, and these costs were removed before the separations process was applied.

¹¹ Id., para. 37.

¹² Id., para. 120.

II. Provisions of Section 251

B. Obligations Imposed By Section 251 (c) on "Incumbent LECs"

1. Interconnection, Collocation, and Unbundled Elements

The Commission seeks comment on the relationship between the obligation of incumbent LECs to provide interconnection and unbundled access pursuant to Section 251 (c) and the obligation of all LECs to establish reciprocal compensation arrangements for the "transport and termination" of traffic pursuant to Section 251 (b).¹³ As the Commission notes, this issue is significant because the 1996 Act established very different pricing standards for these obligations in Section 252 (d).¹⁴

GSA/DOD sees these obligations as entirely different, with absolutely no "overlap."¹⁵ The "interconnection and unbundled access" obligation of the incumbent LECs requires them to allow other carriers to use their facilities. This is a one-way, provider-customer transaction which essentially leases LEC facilities to carrier customers. As such, the 1996 Act establishes a pricing standard under Section 252 (d) (1) which is based on cost and which may include a reasonable profit.

The "transport and termination" obligation of all LECs, on the other hand, is a two-way, co-carrier transaction in which two LECs essentially barter their equivalent services.

¹³ Id., para. 53.

¹⁴ Id.

¹⁵ Id., para 54.

As such, the 1996 Act establishes a pricing standard under Section 252 (d)(2) which is based on mutual and reciprocal compensation, or the waiver of recovery pursuant to "bill-and-keep" arrangements.

The Commission tentatively concludes that it has statutory authority to adopt pricing rules to ensure that rates for interconnection and unbundled network elements are "just, reasonable, and nondiscriminatory."¹⁶ The Commission seeks comment on whether it should establish price floor and ceiling rules for interconnection and unbundled network elements as a guide to negotiating parties and state commissions.¹⁷

GSA/DOD agrees that the Commission has the authority to adopt rules to ensure that incumbent LEC rates are "just, reasonable, and nondiscriminatory" pursuant to Sections 251 (c). GSA/DOD also supports the specification of price floor and ceiling rules. These rules should be designed to allow negotiations to proceed on competitively neutral economic principles.

The Commission should specify that rates should be no lower than those determined according to total service long-run incremental cost ("TSLRIC") principles. Such a floor would not only protect the LEC from confiscatory state regulatory action, it would also prevent the LECs from somehow gaming the system in a predatory manner.

¹⁶ Id., para. 117.

¹⁷ Id., para. 134-143.

The ceiling for rates should be based upon the LECs' fully distributed costs ("FDC"), including a fair return on capital. These costs, after all, are the very costs which the Commission would require to be removed prior to the separations process, as described above. The Commission has a long-established legal obligation to provide the LECs with the opportunity to recover these costs.

Within these bounds, the negotiation process can flourish. Since a competitive carrier can theoretically build its own facilities at the TSLRIC level, the LEC will find itself constrained in its negotiating position. Although it could seek an agreement to recover its FDC costs, it might find that it must agree to lower prices to prevent its competitor from building its own facilities. Conversely, while the competitor could seek to pay no more than TSLRIC based prices, it might accept higher prices to expedite its market entry and minimize its investment requirements. Economically efficient and practical agreements should result from the establishment of floors and ceilings pursuant to these rules.

The Commission also seeks comment on possible principles to guide state decisions in structuring rates for interconnection and unbundling network elements.¹⁸ The Commission specifically seeks comment on whether it should require states to adopt rate structures which are cost-causative, and whether it should require that dedicated facility costs be recovered on a flat-rated basis.¹⁹ Finally, the Commission seeks comment on

¹⁸ Id., para. 149.

¹⁹ Id., para. 152.

whether it should permit volume and term discounts for unbundled network elements.²⁰

GSA/DOD supports all of these proposed Commission initiatives. The structure of LEC rates will clearly influence the incentives for interconnectors to purchase and use interconnection and unbundled network elements. The requirement of Section 251 (d) that prices be based on cost dictates that the structure of rates be cost-causative. Economic efficiency require that dedicated costs be recovered through flat-rates, and not usage sensitive rates. As the Commission notes, the Washington Utilities Commission has concluded that measured use interconnection rates are not cost-based and could harm local consumers.²¹ Since volume and term commitments by purchasers result in cost savings, moreover, it is clearly appropriate for the LECs to offer volume and term discounts.

²⁰ Id., para. 154.

²¹ Id., para. 152.

II. Provisions of Section 251

B. Obligations Imposed By Section 251 (c) on "Incumbent LECs"

2. Resale Obligations of Incumbent LECs

Section 252 (d)(3) provides that wholesale rates shall be set "on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier." The Commission seeks comment on whether it should establish principles for the states to apply in order to determine wholesale prices in an expeditious and consistent manner.²²

GSA/DOD recommends that the Commission establish TSLRIC as the appropriate basis for determining the costs that will be avoided by LECs in offering wholesale services. This standard will ensure that all costs avoided by the LECs will be subtracted from their retail prices in determining wholesale prices. Wholesale prices established under this standard will be fair to the incumbent LECs, since their revenue loss from wholesale sales will be offset by their avoided costs. At the same time, wholesale prices based upon TSLRIC principles will be low enough to permit the development of a vigorously competitive resale market.

²² Id., para. 179.

II. Provisions of Section 251

C. Obligations Imposed on "Local Exchange Carriers" by Section 251 (b)

1. Reciprocal Compensation for Transport and Termination of Traffic

Sections 251 (b)(5) provides that each LEC has the duty to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." Section 252 (d)(2) states that, for the purpose of an incumbent LEC's compliance with Section 251 (b)(5), a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless they both (1) provide for the "mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities to the other carrier," and (2) "determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls." That subsection further provides that the foregoing language shall not be construed "to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and keep arrangements)." The Commission seeks comment on whether it should establish rules to assist states in the implementation of these requirements.²³

GSA/DOD recommends that the Commission endorse the "bill and keep" methodology as the standard procedure for ensuring reciprocal compensation. This

²³ Id., para. 234.

methodology can be quickly established and easily administered, since it requires neither the metering of usage nor the calculation of costs. If there is an extreme imbalance of terminating traffic, however, the Commission should permit compensation based upon TSLRIC principles. Payments at such a level would be just, reasonable and fair to both the originating and terminating LECs.

III. Conclusion

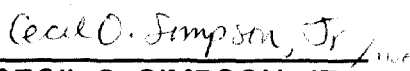
As substantial purchasers of telecommunications services on a competitive basis for the use of the Federal Executive Agencies, GSA and the Department of Defense urge the Commission to implement the local competition provisions of the 1996 Act in the manner described in these Comments.

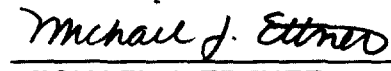
Respectfully Submitted,

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May 16, 1996

CERTIFICATE OF SERVICE

I MICHAEL J. ETTNER, do hereby certify that copies of the foregoing "Comments of the General Services Administration" were served this 16th day of May, 1996, by hand delivery or postage paid to the following parties:

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